IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2651 OF 2007

Prajakta Vijay Varsolkar .. Petitioner.

V/s.

1. State of Maharashtra through its Secretary, Tribal Development Department, Mantralaya,Mumbai-32. and others. .. Respondents.

Mr.R.K.Mendadkar for the Petitioner.

Mr.C.R.Sonawane, AGP for the Respondent-State.

CORAM : F.I. REBELLO AND R.M. SAVANT, JJ.

DATED : 18th APRIL, 2007.

P.C. :- (Per R.M.SAVANT,J.)

. Rule, by the consent of the parties, made returnable forthwith and heard finally.

2. The above petition filed under Article 226 of the Constitution of India, takes exception to the order dated 5th of April, 2007 passed by the Respondent No.2 Committee; by which order the petitioner's caste claim as belonging to Malhar Koli, Scheduled Tribe has been rejected. Such of the facts which are necessary to be

cited are stated thus :

3. The petitioner had earlier filed writ petition No. 6752 of 1998, which petition came to be withdrawn at the final hearing stage by the petitioner with liberty to stake a claim for any other caste than Mahadeo Koli. The Honourable Division Bench, accordingly, passed an order on 8th of March, 2006 with the following observations : "We clarify that dismissal of this petition will not come in her way to claim any other caste other than Mahadev Koli."

4. The petitioner, thereafter, obtained a caste certificate as belonging to Malhar Koli on 9th of March, 2006. On 10th of May, 2006 the petitioner moved the Respondent No.2-Committee for verification of the said caste certificate as belonging to Malhar Koli. The petitioner in support of her caste claim submitted a plithora of documents like, birth certificate, extract of Gaon Namuna/ Village Form No. 14, school leaving certificate of the father of the petitioner, school leaving certificate of the uncle of the petitioner namely, Sharad Janardan Varsolkar, caste certificate of the father of the petitioner and caste certificate of the uncle of the petitioner. The documents submitted by the petitioner are reproduced by the caste Scrutiny

Committee in its order in paragraph -4. As per the procedure the Vigilance Cell submitted its report to the Committee on 08.03.2007 and the petitioner was called for personal hearing on 04.04.2007. On behalf of the petitioner his father remained present for personal hearing and submitted written submission. The Committee considered the documents produced by the petitioner and on the basis of the probative value of each of the documents came to a conclusion that the petitioner does not substantiate her caste as belonging to Malhar Koli. The Committee also referred to the genealogy produced by the petitioner and came to the conclusion that the extract of Gaon Namuna 14 issued by the Tahsildar, Alibag was of the relative of the petitioner, though the genealogy does not match with the name of the persons concerned. The Committee relying upon the certificate of the petitioner's cousin uncle and cousin aunt of the period of 1954 -52, came to the conclusion that the petitioner's caste claim is not substantiated.

5. We have heard the learned counsel for the petitioner and the learned counsel for the respondent. It is significant to note that in the list of documents which are produced by the petitioner, the document No.1 is of the Primary school admission register of one Sharad Janardan Varsolkar in respect of whom the entry

is of Hindu M.Koli. The said Sharad is real uncle of the petitioner. Similarly, there is entry in respect of the petitioner's aunt Sindhu Janardhar Varsolkar, whose primary school admission register also discloses the caste as Hindu M. Koli. Similar is the case of one Surekha Janardan Versolkar, who is also an aunt of the petitioner. The learned counsel for the petitioner drew our attention to the extract of birth and death register in respect of one Janardan Maya Varsolkar, who is grandfather of the petitioner. The said document is of the year 1954 and the entry in the caste column is shown as Malhar Koli. The order of the Scrutiny Committee does not disclose that the said material has been considered by the Scrutiny Committee. The documents produced by the petitioner, in our opinion, have not been properly appreciated by the Scrutiny Committee. The Scrutiny Committee has merely rejected the documents, relating to the near relations of the petitioner on the ground that the entry discloses the caste as M. Koli. It is the case of the petitonier that the said documents if read with the birth and death register in respect of Janardhan, as mentioned herein in above, would indicate that the entries have to be read as Malhar Koli.

6. In so far as the affinity test is concerned, the

Committee has merely observed that the petitioner has failed to prove her affinity towards Malhar Koli. Beyond observing as above, nothing has been mentioned in the impugned order. The petitioner has made a grievance as regards the manner in which the research officer conducted the enquiry; the petitioner had, therefore, sought the cross examination of the research officer as according to the petitioner's counsel the research officer by sitting in his office has conducted the enquiry. In that view of the matter, the petitioner's caste claim as belonging to Malhar Koli would have to be relegated back to the Committee for decision afresh in accordance with law, un-influenced by the observations made in this order. On such remand, the Caste Scrutiny Committee i.e. the Respondent No.2 to decide the caste claim of the petitioner within two months from date. The petitioner would continue her studies as a post graduate student, subject to the decision of the committee on remand as directed above.

7. Rule is accordingly made absolute with no order as to costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

.....